



## DEPARTMENT OF EDUCATION

### 34 CFR Chapter VI

[Docket ID ED-2021-OPE-0077]

#### Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Intent to establish rulemaking committee.

**SUMMARY:** We announce our intention to establish one negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee. We also announce the creation of a subcommittee, and request nominations for individuals with pertinent expertise to participate on the subcommittee. The Department has set a schedule for committee meetings.

**DATES:** We must receive your nominations for negotiators to serve on the committee on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The

dates and times of the committee and subcommittee meetings are set out in the *Schedule for Negotiations* section in the SUPPLEMENTARY INFORMATION section. All meetings will be virtual.

**ADDRESSES:** Please email your nominations for negotiators to [negregnominations@ed.gov](mailto:negregnominations@ed.gov). If you are unable to email your nomination, send it to Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For information about negotiated rulemaking, see "The Negotiated Rulemaking Process for Title IV Regulations Frequently Asked Questions" at <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>. For information about the content of this document, including additional information about the negotiated rulemaking process or the nomination submission process, contact: Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202. Telephone: (202) 453-6708. Email: [vanessa.gomez@ed.gov](mailto:vanessa.gomez@ed.gov).

If you use a telecommunications device for the deaf (TDD) or text phone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

*Background*

On May 26, 2021, we published an announcement of our intent to establish negotiated rulemaking committees under section 492 of the HEA to develop proposed regulations related to a number of higher education practices and issues in the *Federal Register* (86 FR 28299) (Negotiated Rulemaking Committee Notice). The Department suggested the following topics for the negotiated rulemaking process:

- (1) Change of ownership and change in control of institutions of higher education under 34 CFR 600.31;
- (2) Certification procedures for participation in title IV, HEA programs under 34 CFR 668.13;
- (3) Standards of administrative capability under 34 CFR 668.16;
- (4) Ability to benefit under 34 CFR 668.156;
- (5) Borrower defense to repayment under 34 CFR 682.410, 682.411, 685.206, and 685.222;
- (6) Discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402(c), and 685.213;
- (7) Closed school discharges under 34 CFR 685.214 and 682.402(d);
- (8) Discharges for false certification of student eligibility under 34 CFR 685.215 and 682.402(e);
- (9) Loan repayment plans under 34 CFR 682.209, 682.215, 685.208, and 685.209;
- (10) The Public Service Loan Forgiveness program

under 34 CFR 685.219;

(11) Mandatory pre-dispute arbitration and prohibition of class action lawsuits provisions in institutions' enrollment agreements (formerly under 34 CFR 685.300) and associated counseling about such arrangements under 34 CFR 685.304;

(12) Financial responsibility for participating institutions of higher education under 34 CFR subpart L, such as events that indicate heightened financial risk;

(13) Gainful employment (formerly located in 34 CFR subpart Q); and

(14) Pell Grant eligibility for prison education programs under 34 CFR part 690.

We also announced three public hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committees. Those hearings took place virtually on June 21, June 23, and June 24, 2021. We invited parties to comment and submit topics for consideration in writing as well. Recordings and transcripts from the public hearings are available at:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Written comments submitted in response to the Negotiated Rulemaking Committee Notice may be viewed

through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Instructions for finding comments are available on the site under "FAQ". Individuals can enter docket ID ED-2021-OPE-0077 in the search box to locate the appropriate docket.

#### *Committee Topics*

After considering the information received at the public hearings and the written comments, we have decided to establish the Affordability and Student Loans Committee to address the following topics:

- (1) Borrower defense to repayment under 34 CFR 682.410, 682.411, 685.206, and 685.222;
- (2) Closed school discharges under 34 CFR 685.214 and 682.402(d);
- (3) Discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402(c), and 685.213;
- (4) Discharges for false certification of student eligibility under 34 CFR 685.215 and 682.402(e);
- (5) Loan repayment plans under 34 CFR 682.209, 682.215, 685.208, and 685.209;
- (6) Interest capitalization on Federal student loans under 34 CFR 682.202, 685.202, 685.209, and 685.220;
- (7) Mandatory pre-dispute arbitration and prohibition of class action lawsuits provisions in institutions' enrollment agreements (formerly under 34 CFR 685.300) and

associated counseling about such arrangements under 34 CFR 685.304;

(8) Pell Grant eligibility for prison education programs under 34 CFR part 690; and

(9) The Public Service Loan Forgiveness program under 34 CFR 685.219.

As a part of the negotiated rulemaking process, we are forming a Prison Education Program Subcommittee to expand the range of expertise and constituencies represented on this topic. The committee will consider the subcommittee's recommendations in its consideration of proposed regulations to implement Pell Grant eligibility for incarcerated individuals, authorized by the Consolidated Appropriations Act of 2021. Currently, students incarcerated in a State or Federal penal institution are prohibited from receiving Pell Grants. Sections 702 and 703 of the Consolidated Appropriations Act of 2021 amended sections 401 and 484 of the HEA to remove this prohibition; however, the amendments require that an incarcerated student enroll in a qualifying prison education program to qualify for a Pell Grant. The Department intends to develop regulations to implement those changes.

This subcommittee will address these issues and make recommendations to the committee. The subcommittee is not authorized to make decisions for the Affordability and Student Loans Committee. The subcommittee may be comprised

of some members of the committee (negotiators), as well as individuals who are not committee members but who have expertise that will be helpful in developing proposed regulations. Therefore, in addition to asking for nominations for individual negotiators who represent key stakeholder constituencies for issues to be negotiated to serve on the committee (see *Constituencies for Negotiator Nominations*), we seek nominations for individuals with specific types of experience to serve on the subcommittee. Before conclusion of the negotiations, the subcommittee will present its recommendations for regulatory changes to the committee for its consideration.

Seven of the 14 topics listed in the Negotiated Rulemaking Committee Notice are not on the list of topics to be considered by the Affordability and Student Loans Committee. These remaining topics and other topics suggested in the public hearings and written comments provided to the Department may be considered by a separate rulemaking committee(s) formed at a later date, which we would announce in a separate *Federal Register* notice.

We intend to select negotiators for the Affordability and Student Loans Committee who represent the interests of those significantly affected by the topics proposed for negotiation. In so doing, we will comply with the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or

experience in the relevant topics proposed for negotiations. We will also select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee and subcommittee that will allow significantly affected parties to be represented while keeping the committee size manageable.

We generally select a primary and alternate negotiator for each constituency represented on a committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary negotiator. The Department will provide more detailed information to both primary and alternate negotiators selected to participate on the committee about the logistics and protocols of the meetings. The subcommittee will only have a primary member. We will not select alternates for the subcommittee.

Individuals who are not members of the committee will be able to observe the committee meetings, will have access to individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

#### *Constituencies for Negotiator Nominations*

We have identified the following constituencies as having interests that are significantly affected by the



topics proposed for negotiation. We plan to include as negotiators individuals from organizations or groups representing these constituencies and/or individuals who are a part of the constituency. We particularly encourage organizations representing the interests of historically underserved and/or low-income communities to submit their nominations. Nominations must include evidence of the nominee's specific knowledge in these areas, citing specific topics outlined in the *Committee Topics* section. Constituencies for the Affordability and Student Loans Committee are:

(1) Dependent students - these are undergraduate students who are typically traditionally-aged college students. A student is a dependent student if they were required to enter both their and their parents' information on their most recent FAFSA submission.

(2) Independent students - these are often older or nontraditional students, such as students over the age of 24. Students who are married, have children or other dependents, or who were unaccompanied and homeless or at risk of being homeless are independent students. Independent students can be pursuing undergraduate or graduate studies. A student is an independent student if they were not required to enter their parents' information on their most recent FAFSA submission.

Note: Students who were formerly incarcerated and participated in postsecondary education while in prison are included in the independent and dependent student categories regardless of whether they received Federal student aid, and we encourage nominations for individuals with those experiences. For both student spots, we also encourage individuals or organizations representing low-income students to apply.

(3) Student loan borrowers. This includes but is not limited to: student loan borrowers who are currently repaying their student loans, student loan borrowers who defaulted or are currently in default, student loan borrowers who were in forbearance or are currently in the administrative (automatic) forbearance due to COVID-19, and student loan borrowers who prior to the administrative forbearance were delinquent (late) on their student loans payments.

(4) Legal assistance organizations that represent students and/or borrowers.

(5) U.S. military service members, veterans, or groups representing them.

(6) State attorneys general.

(7) State higher education executive officers, State authorizing agencies, and/or State regulators of institutions of higher education and/or loan servicers.

(8) Individuals with disabilities or groups representing them.

(9) Financial aid administrators at postsecondary institutions.

(10) Two-year public institutions of higher education.

(11) Four-year public institutions of higher education.

(12) Private nonprofit institutions of higher education.

(13) Proprietary institutions.

(14) Minority-serving institutions - institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, Native American-Serving Nontribal Institutions, and Asian American and Native American Pacific Islander-Serving Institutions.

(15) Federal Family Education Loan (FFEL) lenders and/or guaranty agencies.

(16) Accrediting agencies.

The goal of the committee is to develop proposed regulations that reflect a final consensus of the

committee. Consensus means that there is no dissent by any member of a negotiating committee, including the committee member representing the Department.

An individual selected as a negotiator is expected to represent the interests of their organization or group and to participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by a member of such an organization.

We are interested in nominations for members of the Prison Education Program Subcommittee from individuals who represent the following groups:

- (1) Consumer advocacy organizations.
- (2) Financial aid administrators.
- (3) Formerly incarcerated students.
- (4) Groups that represent incarcerated students.
- (5) Postsecondary institutions that are prison education program providers.
- (6) State correctional education directors.
- (7) State higher education executive officers.

We encourage representatives from postsecondary institutions that are currently participating in the Department's Second Chance Pell Experiment to submit nominations. For more information on the Second Chance Pell experiment please visit:  
<https://experimentalsites.ed.gov/exp/approved.html>.

#### *Advisors*

The Department also invites nominations for two advisors. These advisors will not be members of the committee and will not impact the consensus vote; however, we will consult with the advisors, who will serve as a resource. We seek an advisor representing qualifying employers on the topic of Public Service Loan Forgiveness. The term "public service job" for purposes of the Public Service Loan Forgiveness program is defined in section 455(m) (3) (B) of the HEA as including jobs in: emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf

of low-income communities at a nonprofit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code, or teaching as a full-time faculty member at a Tribal College or University as defined in section 316(b) of the HEA and other faculty teaching in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

Additionally, we seek an advisor with expertise in economic and/or higher education policy analysis and higher education data to support the committee in evaluating and understanding its options.

The advisors will be expected to be available throughout the duration of the Affordability and Student Loans Committee (excluding the Prison Education Program subcommittee) meetings, in the event that issues related to Public Service Loan Forgiveness arise. The Department will work with the committee and the advisors to determine more specific dates and times that the advisors must be present

for the committee meetings. The advisors may be asked to provide information on their experience as an employer in a public service job and as an economist and/or higher education researcher, respectively. For example, the employer advisor should be prepared to relay how they assist employees with the Employment Certification Form or how the full-time employment requirement for the Public Service Loan Forgiveness Program impacts part-time employees. The economic and/or higher education research advisor should be prepared to examine data related to student loan repayment, including income-driven repayment plans. The advisors may also offer recommendations to the committee on regulatory language.

#### *Nominations*

We strongly suggest that nominations for both the committee and subcommittee include the information described in this section. The Department anticipates increased interest due to the number of topics, and nominations lacking that information may be more difficult for the Department to evaluate. We also suggest that nominees exclude any supplementary information that is not requested in this section.

(1) The exact name of the constituency or constituencies the nominee is being nominated for (see *Constituencies for Negotiator Nominations*);

(2) The name of the nominee;

(3) The nominee's place of employment or institution at which they are or were enrolled and, if different, the organization the nominee represents;

(4) A resume or evidence of the nominee's expertise and experience in the topics proposed for negotiations; and

(5) The nominee's contact information, including the nominee's email address, telephone number, and physical mailing address or post office box.

Please see the ADDRESSES section for submission information. If the nomination is submitted by the recommended email method to [negregnominations@ed.gov](mailto:negregnominations@ed.gov), the submitter will receive an email confirmation of receipt. The Department will provide additional information to those we select to serve as negotiators. Once complete, a list of negotiators will be posted here:

[www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.htm](http://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.htm)

1. If a constituency does not have a qualifying nominee, the Department will also provide information at that site about how any vacancies can be filled at the beginning of the October 4, 2021 committee meeting.

#### *Schedule for Negotiations*

The Affordability and Student Loans Committee will meet for three sessions on the following dates:

Session 1: October 4-8, 2021

Session 2: November 1-5, 2021

Session 3: December 6-10, 2021



Times for the committee meetings will be published here:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

The Prison Education Program Subcommittee will meet for two sessions in October and November. The sessions will be three days each. We will announce the dates and times of the subcommittee meetings as soon as possible here:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

All negotiated rulemaking committee meetings will be conducted virtually and available for the public to view. Individuals who wish to observe the committee meetings will be required to register for each day they would like to observe. We will post registration links closer to the start of negotiations on our website at:  
[www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html](https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html). The Department will also post recordings and transcripts of the meetings on that site.

At the end of each day, the Department will reserve 30 minutes for public comment. We will provide information on how to request time to speak on our website at  
[www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html](https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html).

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